

DMLR PERMIT ENHANCEMENT WORK GROUP
Oxbow Center, St. Paul, Virginia
April 16, 2008
9:30 a.m.

Butch Lambert	Ian Dye	Gerald Collins
Les Vincent	Otis D. Mullins	Jerry Wess
Jan Zentmeyer	Roger Jones	Mike Edwards
Gavin Bledsoe	Barry Spry	Brooks Smith
Greg Baker	Greg Clark	John Jones
Tom Mackey	Dave Gruber	Michael Smith
Todd Richardson	Tracy Goff	Leslie Bright
Daniel Kestner	Byrd Copley	Bob Blackstock
Gary Sloan	John Looney	Randy Stanley
Lesa Baker	Tad Nunley	Phil Mullins
Gary Egan	Brian Evans	Tom Baumgarth
Joey O'Quinn	Roberta Hylton	Buddy Hamilton
Lynn Haynes	Nathan Conn	James Mullins
John Molinary	Mary Cromer	Harve Mooney
Annette Poore	Mark Sproles	Keith Mohn
David Allen	Tim Browning	Lance DeBord
Brad Kreps	Marilyn Gates	

Permit Enhancement Work Group

Butch Lambert welcomed everyone to the meeting. An update followed concerning DMLR personnel changes as follows:

- Bo Willis, DMME Director, passed away on Monday, April 14, 2008. Butch noted that he does not foresee any changes that would impact the division due to Bo's death.
- Benny Wampler, Deputy Director, will be retiring at the end December, 2008.
- Division Director for Gas and Oil, Bob Wilson, is retiring, and effective June 1, David Asbury will be his replacement. David is Emergency Coordinator for the Division of Mines.
- Ecologist position (Chris Stanley's job) has been advertised and is now closed. Applications are in review at this time.
- Randy Casey, engineer and former DMME employee, will be coming on board April 25.
- Bob Stimpson, engineer, will be retiring February 1.
- Kathy Davidson replaced Mike Witt as a Permit Reviewer.
- Leslie Bright replaces J. H. Rivers as the DMME training coordinator.
- Ernie Barker, Enforcement Manager, will be leaving at the end of the year.

Butch noted that budget problems for DMLR have been resolved with the AML reauthorization. DMLR will be getting \$7.2 million for AML (a \$2 million increase) and by 2013 we should be

getting \$15 million for AML. DMLR staff will need to increase to complete projects. Four (4) inspector positions have been advertised. Two (2) inspectors are on short-term disability.

Total Dissolved Solids Sampling (TDS) – A letter has been drafted that will probably go out Monday, April 21st to all permittees. The letter will instruct those currently operating permits in the Total Maximum Daily Load (TMDL) watersheds identified as: Dumps Creek, Callahan Creek, Russell Prater Creek, Straight Creek, Knox Creek and Paw Paw Creek, that effective June 1, 2008, they will be required to start monitoring for TDS. EPA is now asking for TDS monitoring in their review of TMDL applications. It will be mandatory to collect and submit those samples to DMLR. If anyone has questions about this monitoring or sampling forms, please contact Mike Smith @276/523-8258.

Permitting Issues - Greg Baker

- Company e-mail addresses – Please submit e-mail addresses for permittees
- EP Folders – File placed on the system. Electronically submitted items will be placed in these folders under each permit and will be accessible for review, downloading and printing.
- E-Forms Update – All anniversary reports in EP format
Rainfall Monitoring report form is now an excel spreadsheet and can be submitted by e-mail

Procedures for Pond Certifications –

- Annual pond certifications must be submitted in the Anniversary Report or Renewal Application and attached in Item 21.1
- Completion of construction certifications; these should be submitted on disc
- Quarterly fill certifications should be on disc also, however, if you have multiple permits, please submit each permit on a separate disc.
- These items still have to be submitted with an original certification sheet until digital signatures are approved.

Administratively Complete Permit Applications – Applications will be checked closer to be sure applicable items are filled out completely. If not, application will be returned.

Digital Signature Update - Todd Richardson

DMME and VDOT will be involved in a pilot program for digital signatures. VDOT will have approximately 800 employees involved in the program which will help to lower the cost. We expect within 30 days to have the bid out to market and should have the product for use within 60-90 days.

Procedures for Temporary Cessations - Tom Mackey

- Temporary cessations will no longer be approved for longer than 2 and ½ years.
- If a site has been in temporary cessation for five years, DMLR will conduct a complete technical review of the permit for compliance of all regulations.

- Permits that are in temporary cessation for more than ten (10) years may not be renewed. In the event that an extension is not granted, the permittee will be required to activate coal surface mining operations at the temporary cessation areas or reclaim the site.
- Good justification will be needed for not mining or reclaiming.
- If a permittee desires to extend, a “not started” permit will have to be updated.
- It was noted that companies have 3 years to start a permit once it is permitted.

TMDL Update - Harve Mooney

- Current number of TMDL’s under development is seventeen (17)
- Total TMDL’s completed - 344 total statewide
- 72 consent decree done - DEQ must complete 134 by 2010 under consent decree
- There are 31 TMDL’s associated with mining areas and will need to be completed by 2010. 11 have been done.
- The 303(d) impaired waters list is updated every even numbered year. A list is due this year.
- Watersheds that have completed TMDL’s are:
Lick Creek (Wise County), Indian Creek (Tazewell), Middle Creek (delisted)
Knox Creek (Buchanan County), Paw Paw Creek (Buchanan County),
Garden Creek (Buchanan County)
- DEQ is currently working on Bull Creek

Update on TMDL Review Process - Mike Smith

- **TMDL Application Review**

DMLR has reviewed 25 TMDL applications since May 2006.

- 10 applications have been approved by DMLR and forwarded to EPA for review.
- 8 applications are currently in DMLR review that have not been sent to EPA.
- 7 applications have been approved by both EPA and DMLR.

- **EPA Review of Applications**

- EPA requested changes in the way DMLR submits information for EPA review.
- DMLR will need to include contractual language in the trade documents that ensures offsets will be carried out.
- EPA is in support of offsets for both point source to point source trades as well as point source to non-point source trades.
- The changes that they requested are:
 - Standard terms and conditions
 - Description of BMPs proposed for the permit
 - NPDES limit table
 - Monitoring plan
 - Factsheet
 - Detailed TMDL offset description
 - Narrative including requirement of offset to be completed and schedule for completion

- Re-opening clause for instances where permit changes need to be made
- Requirement to send electronic Discharge Monitoring Forms to EPA.
- TMDL map showing pre-SMCRA mined areas, TMDL watershed boundary, outfall boundary, outfall locations, offset areas.

Monitoring Requirements

TDS sampling will involve approximately 486 NPDES monitoring locations at present in the TMDL watersheds where TDS is identified as a stressor (Includes not constructed and no discharge outfalls).

Software Development

DMLR is currently working on spatial queries to select data from each watershed for TMDL load calculations (currently done manually).

Working on offset credit assignments, accounting and establishment of offset rules

Species Specific Protective Measures Guide Update – Brooks Smith (Mining Issues Workgroup), presented industry's perspective of the Species Specific Protective Measures document. He stated that the objective of the Species Specific Protective Measures is not to prevent any take (of species) but to minimize the potential for a take that goes in excess of that level that is determined to be incidental and lawful under the Biological Opinion.

The meeting was dismissed at 11:30 a.m.

DMLR PERMIT REGULATORY WORK GROUP
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11:30 a.m.

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Regulatory Work Group – Gavin Bledsoe

NPDES permit fees - § 45.1-254 of the **Code of Virginia** was amended by enactment of Senate Bill # 413 (Chapter 275 of the 2008 Acts of Virginia General Assembly) to provide for permit application and anniversary fees for discharge outfalls subject to the NPDES permits. The permit/renewal application and anniversary fees of \$300 per discharge outfall will be assessed by the DMLR effective July 1, 2008.

Proposed Regulatory Amendments:

In January, the DMME received a 732 notice from OSM to amend the Va. regulations regarding valid existing rights. An amendment to 4VAC25-130-700.5 is being proposed to be consistent with applicable federal amendments regarding “**valid existing rights**” as published in the Dec. 17, 1999 Federal Register.

Background –

- Federal Regulations amendments regarding “valid existing rights” published in Federal Register (Vol. 64, No. 242, effective Dec. 17, 1999).
- Aug. 22, 2000, OSM letter to DMME requiring amendment to Virginia’s regulatory program under 30 CFR 732.17(c), to remain consistent with federal requirements.

- Oct. 23, 2000, DMME response letter to OSM's 732 letter of Aug. 22, 2000.
- Allen D. Klein, Regional Director of OSM granted permission for states to delay submitting program amendments on the "VER" rules until industry challenges to rule were adjudicated.
- Jan. 15, 2008, in the U. S. Court of Appeals for the District of Columbia, *Nat'l Mining Association vs. Dirk Kempthorne, Sec. of the Interior* (Case # 06-5199), affirmed the judgment rendered by the U.S. District Court for the District of Columbia (Case # 00cv00283). – "*The district court properly accorded Chevron deference to the Secretary's interpretive rule.*"
- January 31, 2008, 732 notification letter from Ian Dye, OSM Area Office Manager to Dir. B. Lambert to amend its program to address 12/17/99 changes to Fed. Regulations (30 CFR, Vol. 64, No. 242, pp70766-70838) regarding "valid existing rights".

Regulation(s) - 4VAC25-130-700.5; 4VAC25-130-773.15; 4VAC25-130-773.20; 4VAC25-130-773.21; 4VAC25-130-774.12; 4VAC25-130-774.17; and 4VAC25-130-778.13

Amendments to the Virginia regulations are being proposed & made pursuant to §45.1-230(A) of the **Code of Virginia**, as amended, to be consistent with applicable federal amendments regarding "ownership and control" standards published in the Dec. 3, 2007 Federal Register (Vol. 72, No. 231, pp 68000-68031). The federal amendments became effective as of January 2, 2008.

Regulation(s) - 4VAC25-130-700.5; 4VAC25-130-773.13; 4VAC25-130-800.40; 4VAC25-130-801.12; 4VAC25-130-801.13; and, 4VAC25-130-840.14

Amendments to the Virginia regulations are being proposed to –

- Replace the use of "cognovit note" with "indemnity agreement" for the self-bond instrument under §4VAC25-130-801.13 of the regulations and §45.1-270C of the **Code of Virginia**, as amended. (Regulations - 4VAC25-130-700.5; 4VAC25-130-801.12; and 4VAC25-130-801.13)
- Revise §4VAC25-130-773.13(b)(1) to provide public entities with the same amount of time to comment on an application as provided to the public.
- Revise §4VAC25-130-800.40(f) to provide delete the provision that the hearing may be held at the State capital.
- Amend §4VAC25-130-840.14(c)(2) to allow the agency to provide the information by electronic transmittal and the maintenance of the description of available information from the Division's offices and internet site.

Gavin discussed the state and federal processes for changes to the Virginia regulations.

The meeting was dismissed at 12:00 noon.